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FILED

DISTRICT COURT OF GUAM

JUN - 2 2006

MARY L.M. MORAN
CLERK OF COURT

7 **DISTRICT COURT OF GUAM**

8 **TERRITORY OF GUAM**

9 JULIE BABAUTA SANTOS, *et. al.*,

10 Petitioners,

11 -v-

12 FELIX P. CAMACHO, *et. al.*

13 Respondents.

15 CHARMAINE R. TORRES, *et al.*,

16 Plaintiffs,

17 -v-

18 GOVERNMENT OF GUAM, *et al.*,

19 Defendants.

20 MARY GRACE SIMPAO, *et al.*,

21 Plaintiffs,

22 -v-

23 GOVERNMENT OF GUAM,

24 Defendant.

25 -v-

26 FELIX P. CAMACHO, Governor of Guam,
 27 Intervenor-Defendant.

Civil Case No. 04-00006

**NOTICE OF DISMISSAL OF CLAIMS
 AGAINST ATTORNEY GENERAL
 DOUGLAS B. MOYLAN IN CIVIL
 ACTION NO. 04-00038 OR, IN THE
 ALTERNATIVE, MOTION TO
 DISMISS CLAIMS AGAINST
 ATTORNEY GENERAL DOUGLAS B.
 MOYLAN IN CIVIL ACTION NO. 04-
 00038, PURSUANT TO SECTION
 II(a)(ii) OF THE MAY 26, 2006 CLASS
 ACTION SETTLEMENT
 AGREEMENT, AND MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

CLASS ACTION

Civil Case No. 04-00038

Civil Case No. 04-00049

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Rule 41(a)(1) provides, in relevant part, as follows:

(a) Voluntary Dismissal: Effect Thereof.

Fed. R. Civ. P. 41(a)(1) (emphasis added).

However, in the event that this Honorable Court finds voluntary dismissal without court order inappropriate, Torres, in the alternative, moves to dismiss the claims against AG Moylan, as further set forth in this filing.¹

(footnote continues on next page)

1 **MOTION TO DISMISS CLAIMS AGAINST ATTORNEY GENERAL**

2 **DOUGLAS B. MOYLAN IN CIVIL ACTION NO. 04-00038**

3 **AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

4 **PLAINTIFF CHARMAINE R. TORRES** ("Torres") hereby moves to dismiss her
5 claims against Attorney General Douglas B. Moylan in Civil Action No. 04-00038, consistent
6 with the requirements of Section II(a)(ii) of the May 26, 2006 Settlement Agreement entered into
7 by the *Santos* and *Torres* parties (Civil Action Nos. 04-00006 and 04-00038 respectively).

8 **I. INTRODUCTION**

9 Torres commenced Civil Action No. 04-00038 on August 9, 2004, asserting claims
10 against defendants including Attorney General Douglas B. Moylan ("AG Moylan").² Torres
11 amended the complaint on August 27, 2004. On October 28, 2004, AG Moylan filed a motion to
12 dismiss the First Amended Complaint and to strike him as a party defendant to the action. On
13 September 29, 2005, Magistrate Judge Joaquin V.E. Manibusan issued a Report and
14 Recommendations in which he recommended, *inter alia*, that the District Judge grant AG
15 Moylan's motion to strike himself as a party defendant. At no time has AG Moylan ever filed an
16 answer to the First Amended Complaint or a motion for summary judgment.

17 On May 26, 2006, the settling parties to the *Santos* and *Torres* actions submitted to the
18 Court a Settlement Agreement resolving the class action claims in those cases. In Section

19 *(footnote cont'd from previous page)*

20 ambiguity in former Rule 23(e)'s reference to dismissal or compromise of 'a class action' " as the
21 language in the former rule "could be—and at times was—read to require court approval of settlements
22 with putative class representatives that resolved only individual claims." The Advisory Committee Notes
further state: "The new rule requires approval only if the claims, issues, or defenses of a certified class are
resolved by a settlement, voluntary dismissal, or compromise."

23 As the class in Civil Action No. 04-00038 has not yet been certified, the current Rule 23(e) does
24 not appear to require court approval of any claims that are dismissed prior to certification. Therefore, it is
Torres's position that her voluntary dismissal of claims against AG Moylan at this time, in this pre-
25 certification class action, is proper under Rule 41(a)(1). However, because the revisions to subsection (e)
of Rule 23 have only been in effect for a little more than two years and courts have had only that limited
26 period to interpret the new amendments, Torres recognizes that the Court may decide to require court
approval as a condition of dismissal. Consequently, Torres, in the alternative, moves the court for an order
dismissing AG Moylan.

27 ² The Attorney General is not a party to either Civil Action No. 04-00006 (the *Santos* Action) or
28 Civil Action No. 04-00049 (the *Simpao* Action). He was initially named as a Respondent in the *Santos*
Action, but was subsequently dismissed by stipulation of the parties.

1 II(a)(ii) of the Settlement Agreement, Torres agreed to seek a dismissal of AG Moylan as a party
2 from the *Torres* action and the parties to the Settlement Agreement agreed to support such
3 motion.

4 II. ARGUMENT

5 A. Dismissal

6 As noted earlier,³ Federal Rule of Civil Procedure 23(e)(1)(A) (effective Dec. 1, 2003)
7 provides that “[t]he court must approve any settlement, voluntary dismissal, or compromise of the
8 claims, issues, or defenses of a *certified* class.” Fed. R. Civ. P. 23(e)(1)(A) (emphasis added). It
9 would appear that since the class here has not yet been certified,⁴ court approval of the dismissal
10 of claims against AG Moylan is not required under Rule 23(e). But the new amendments to Rule
11 23 (which include amendments to subdivision (e)), have been in effect only since December 1,
12 2003 – a little more than two (2) years – and Torres recognizes that courts have only had that
13 period of time in which to interpret the amended language. Accordingly, Torres recognizes that
14 the Court here may decide to require court approval for the dismissal of claims against AG
15 Moylan, even though such a dismissal could otherwise be accomplished without court order
16 under Fed. R. Civ. P. 41(a)(1). Therefore, Torres has filed this motion for court approval

17 In this case, a voluntary dismissal of Torres’s claims against AG Moylan is warranted. A
18 settlement agreement has been reached in these class action cases in which the parties to the
19 *Santos* and *Torres* actions agreed that Torres would seek a dismissal of AG Moylan as a party
20 defendant in Civil Action No. 04-00038. *See* May 26, 2006 Settlement Agreement, § II(a)(ii).
21 The rationale for seeking dismissal of AG Moylan was to avoid continued litigation over an issue
22 that was not germane to the relief and recovery secured for the benefit of the putative EIC class
23 by virtue the May 26, 2006 Settlement Agreement. In Civil Action No. 04-00038, AG Moylan
24 sought his dismissal from this case not long after the action was commenced, and his request for
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27 ³ *See* note 1, *supra*.

28 ⁴ Certification for settlement purposes is being sought concurrently pursuant to the section
II(a)(iii) of the Settlement Agreement.

1 dismissal was acted upon favorably as set forth in the Report and Recommendations filed by
2 Magistrate Judge Manibusan on September 29, 2005.

3 **B. Notice**

4 In the event that the Court determines that it is necessary to give notice to the EIC Class
5 regarding the voluntary dismissal of claims against AG Moylan (whether as a result of Torres's
6 Notice of Dismissal under Rule 41(a)(1) or court order pursuant to Rule 23(e)),⁵ Torres submits
7 that such notice can be incorporated into the language of the proposed notice attached as Exhibit
8 "C" to the May 26, 2006 Settlement Agreement, which is intended to be sent to all putative class
9 members upon the Court's preliminary approval of the Settlement Agreement. The language to
10 be incorporated in Exhibit "C" would be approved by the Court.

11 **III. CONCLUSION**

12 Based on the foregoing, Torres respectfully requests that the Court approve the dismissal
13 of AG Moylan as a party defendant to Civil Action No. 04-00038, and that if deemed necessary,
14 the Court order that notice of such dismissal be given to EIC class members by incorporating
15 such language into Exhibit "C" of the May 26, 2006 Settlement Agreement, and proceeding
16 thereafter with the notice procedures provided for under the Settlement Agreement.

17 **RESPECTFULLY SUBMITTED** this 2nd day of June, 2006.

18 **LUJAN AGUIGUI & PEREZ LLP**

19
20 By:


21 **IGNACIO C. AGUIGUI, ESQ.**

22 *Attorneys for Charmaine R. Torres*

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27 ⁵ Cf. (pre-2003 cases) *Diaz v. Trust Territory of the Pac. Islands*, 876 F. 2d at 1408 ("[i]n no pre-
28 certification dismissal would the court reject the dismissal and require anything more than notice to the
class and an opportunity to intervene."); *Burgener v. Calif. Adult Auth.*, 407 F.Supp. 555, 560 (N.D. Cal.
1976) (requiring notice except under certain limited circumstances, including involuntary dismissals).